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Jerry Ryce Builders, Inc. *and* International Union of Bricklayers and Allied Craftworkers, AFL– CIO, Illinois District Council No. 1. Cases 13– CA–43917 and 13–CA–43918

June 9, 2010

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS SCHAUMBER, BECKER, AND PEARCE

The General Counsel seeks default judgment in this case on the ground that the Respondent has failed to file an answer to the compliance specification.

On August 29, 2008, the Board issued a Decision and Order¹ directing the Respondent to take certain affirmative action including, inter alia, making whole Andrzej Kwiecien, Jacek Probola, Humberto Juarez, Luciano Padilla, and Dwan Johnson for any loss of earnings and other benefits suffered as a result of the discrimination against them. On November 5, 2009, the Court of Appeals for the Seventh Circuit entered its Consent Judgment enforcing in full the provisions of the Board's Order.²

A controversy having arisen over the Respondent's obligation to extend offers of reinstatement to discriminatees Kwiecien and Probola and offers of employment to discriminatees Juarez, Padilla and Johnson, and its continuing liability for backpay due all of them, on January 29, 2010, the Acting Regional Director issued a compliance specification and notice of hearing alleging the amount of backpay due under the Board's Order, as enforced, and notifying the Respondent that it should file an answer by February 19, 2010, pursuant to the Board's Rules and Regulations. Although properly served with a

copy of the compliance specification, the Respondent failed to file an answer.³

By letter dated March 9, 2010, the Region advised the Respondent that no answer to the compliance specification had been received and that unless an answer was filed by March 16, 2010, a motion for default judgment would be filed.⁴ To date, the Respondent has failed to file an answer.

On March 29, 2010, the General Counsel filed with the Board a Motion for Default Judgment, with exhibits attached. Thereafter, on March 30, 2010, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

^{1 352} NLRB 1262 (2008).

² No. 09-1239.

³ The General Counsel's motion states that on February 19, 2010, counsel for the Respondent submitted a Motion to Withdraw and Other Relief, requesting leave to withdraw as counsel for the Respondent. In support of the motion, Respondent's counsel stated that the Respondent failed to respond to repeated efforts to contact it. The Respondent's counsel further requested that the Respondent be granted an extension of time in order to obtain new legal representation and to file an answer to the compliance specification. The Regional Director granted the requests on the same date and extended the time to file an answer until March 5 2010 The Regional Director's order was sent out by regular mail on February 19, 2010, and by certified mail on February 22, 2010, to the Respondent's last known address. The Region's motion further states that it did not receive a return receipt from the Respondent; however, after searching the United States Postal Service's Track & Confirm system, the Region discovered that the letter was unclaimed by the addressee and was being returned. There is no indication that the letter sent by regular mail was returned.

It is well settled that a respondent's failure or refusal to accept certified mail or to provide for appropriate service cannot serve to defeat the purposes of the Act. See, e.g., *I.C.E. Electric, Inc.*, 339 NLRB 247 fn. 2 (2003), and cases cited therein. Further, the failure of the Postal Service to return documents served by regular mail indicates actual receipt of those documents by the Respondent. *Lite Flight, Inc.*, 285 NLRB 649, 650 (1987), enfd. 843 F.2d 1392 (6th Cir. 1988).

⁴ The March 9, 2010 letter was sent by certified mail. The Region did not receive a return receipt; however, the Region's motion states that a search of the Postal Service's track & confirm system indicated that the letter remained unclaimed by the addressee.

Ruling on Motion for Default Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) provides that if the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Default Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and we grant the General Counsel's Motion for Default Judgment. Accordingly, we conclude that the amounts of backpay due the discriminatees are as stated in the compliance specification, and we will order the Respondent to pay those amounts, plus interest accrued to the date of payment.

The Respondent's liability for additional backpay, accruing from December 31, 2009, continues for each of the named discriminatees and for discriminatee Dwan Johnson until such time that the Respondent may extinguish its liability by extending valid offers of reinstatement and employment to Kwiecien, Probola, Juarez, Padilla, and Johnson.

ORDER

The National Labor Relations Board orders that the Respondent, Jerry Ryce Builders, Inc., Chicago, Illinois,

its officers, agents, successors, and assigns, shall make whole discriminatees Andrejz Kwiecien, Jacek Probola, Humberto Juarez, and Luciano Padilla by paying them the amounts following their names, plus additional backpay and interest which may accrue in the absence of a valid offer of reinstatement or employment to the discriminatees named below and to Dwan Johnson, plus interest accrued to the date of payment, as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and State laws:

Andrejz Kwiecian	\$ 47,807.92
Jacek Probola	\$ 56,467.99
Humberto Juarez	\$ 32,093.96
Luciano Padilla	\$ 57,267.99
TOTAL BACKPAY DUE:	\$193,637.86

Dated, Washington, D.C. June 9, 2010

Peter C. Schaumber,	Member
Craig Becker,	Member
Mark Gaston Pearce,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD